IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2546 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIRINBEN W/O. JITESHBHAI G. PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2546 of 2004

MRS S G Patel, for Mr AR SHAIKH for Petitioner No. 1

Ms Mita Panchal for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 17/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under under Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 21.10.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that a First Information Report was lodged against the petitioner before Randher police station being C.R. No.389/2003 involving the petitioner for offences punishable under sections 3,4 and 5 of the Prevention of Immoral Traffick Act. It was also alleged against the petitioner that two unnamed witnesses have rendered statements against the petitioner whose names were not disclosed to the petitioner. On the strength of the aforesaid registered offence and two unregistered cases, the detaining authority found that the petitioner was a bootlegger and with a view to prevent him from carrying on his bootlegging activities leading to a threat to public order, he was required to be detained and therefore, he was ordered to be detained and by the impugned order of the Commissioner of Police, Surat.

3. Feeling aggrieved by the said order of detention, the petitioner has preferred this petition before this Court. Along with other contentions, the learned Advocate for the petitioner has also raised a ground that though the detaining authority has taken into account copy of the bail order under which the petitioner was enlarged on bail, the detaining authority has supplied only operative portion of the bail order and not the full text of the bail order and in absence of the receipt of the full text of the order of the trial court, the petitioner could not make effective representation against the detention order. That, consequently, a valuable right guaranteed under Article 22(5) of the Constitution of India has been denied. That therefore, the further continuance of his detention is not sustainable in the eye of law. It has also been contended that names of the witnesses were not disclosed to the petitioner and therefore, the petitioner could not make effective representation against his detention without knowing names of the witnesses who have rendered statements against the petitioner. In that view of the matter, it is contended that the further detention of the petitioner is illegal and the order of detention may be quashed and set aside and the petitioner may be released forthwith.

4. On receipt of the petition, rule was issued and

in response to the notice of rule, Ms. Mita Panchal, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and perused the papers.

5. Learned Advocate for the petitioner has drawn my attention to one of the grounds raised in the petition being para 5 (27) at page 27 which may be reproduced hereunder:

> "5(27) The petitioner submits that copy of bail application made by the detenu along with copy of the order of the bail at page no.51 of the compilation are supplied to the detenu. The petitioner submits that the detaining authority has not supplied the complete reasoned order of bail but at page no.51 an extract containing operative part "ORDER" is supplied. The petitioner submits that order of bail is an incomplete document. Therefore, the subjective satisfaction is vitiated and that it amounts to non-application of mind on the part of the detaining authority and that the order of detention is passed mechanically by the detaining authority and further the supply of the incomplete document amounts to non communication of grounds of detention and also it violates the right of the representation. Therefore, the order of the detention may be quashed and set aside."

6. On the strength of the above contention, it has been argued that since the petitioner was supplied with only operative portion of the order on the bail application, the petitioner did not know the contents of the bail order and, therefore, the petitioner could not submit effective representation. If we go through the grounds of detention, it can be gathered from page no.37 that the detaining authority has taken into account a copy of the bail application submitted by the petitioner before the court concerned and copy of the order passed by the said court enlarging the petitioner on bail. Therefore, the detaining authority did consider copy of the order passed by the court concerned for the enlargement of the petitioner on bail. Here the order of bail has been divided into two parts. The reasoning part of the said order has not been supplied to the petitioner whereas the operative portion only was supplied to the petitioner. This means that the petitioner could not know the contents of the bail order showing reasons for enlargement of the petitioner on bail. It is therefore,

contended that on account of non-supply of the said material, the petitioner could not effectively represent his case and, therefore, the order of detention is illegal and the further continuance of the detention of the petitioner is also illegal.

7. In support of the said contention, learned Advocate for the petitioner has relied upon a decision dated 5.8.2002 in Special Civil Application No.5504/2002. The relevant portion can be drawn from the said judgment and it may be reproduced as under:

> "The first ground argued is that the petitioner detenu has not been supplied with the very vital and important document referred to and relied upon by the detaining authority while passing the impugned order of detention and therefore that has resulted into serious prejudice to the petitioner in making effective represention. While enlarging the arguments on this point it is specifically pointed out that copy of the bail application preferred by the petitioner before the competent criminal has been supplied to the petitioner. However, the entire order of bail passed by the learned Addl.Sessions Judge, Surat has not been supplied to the petitioner. Some parts of pages nos. 7 and 8 of the order of bail have been supplied. The order of bail passed by the learned Addl.Sessions Judge, Surat runs into 8 typed pages and first six pages are missing and they are not supplied to the petitioner. It is argued that these first six pages contain the grievances of the petitioner and the reasons assigned by the learned Addl.Sessions Judge while granting bail. If this order would have been supplied to the petitioner, this could have helped the petitioner in making effective representation. It can legitimately be argued that these first 6 pages might not have been placed before the detaining authorities; otherwise they could have been supplied along with the bunch of papers served to the detenu along with the grounds of detention. Thus the important part of the decision of the learned Addl.Sessions Judge was not placed before the detaining authority by the sponsoring machinery. If the full order passed by the learned Addl.Sessions Judge has been placed before the detaining authority it can be inferred that the detaining authority might have reached to a different conclusion. It is settled principle of

law that if the court is satisfied that an important and vital document is referred to and relied upon by the detaining authority and copy of the same is not supplied to the detenu, then the order of detention cannot sustain at all and it should be turned down."

8. The facts of the case on hand and the facts of the case in the aforesaid matter appear to be identical. Here also, only operative portion of the bail order has been supplied to the petitioner. It is also on record that the full text of the order of the trial court enlarging the petitioner on bail has not been supplied to the petitioner. Therefore, the petitioner could not make effective representation against his detention and consequently a valuable right to make effective representation under Article 22(5) of the Constitution of India has been defeated. In that view of the matter, further continuance of the detention of the petitioner cannot be sustained in the eye of law. Therefore, on following the principles enunciated in the aforesaid matter, I find that the further continuance of the detention of the present petitioner also not sustainable and, therefore, the petitioner is required to be released. This can be done by quashing and setting aside the order of detention.

9. For the foregoing reasons, this petition is allowed. The impugned order dated 25.9.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp